



FORENSICS FOR JUSTICE

MAKING SOUTH AFRICA
A BETTER PLACE FOR ALL

NPC No. 2015/25962/08

Any port in a storm?



Italian construction company attempts to resolve financial crisis by 'fronting' in South Africa

**Forensic Report on R4.2Bn Contract Award
by Transnet, in respect of works at
Durban Container Terminal**



NPC No. 2015/25962/08

INTRODUCTION

Forensics for Justice is a registered not for profit organisation with NPC No. 2015/25962/08, carrying out public interest work for the betterment of the people of South Africa. Our main focus is to expose corruption (see www.forensicsforjustice.org)

We acknowledge the provision of Forensic Services by Paul O'Sullivan & Associates.

The purpose of this Report is to set out our findings pertaining to Transnet tender awarded to CMI Emtateni Joint Venture '**CMI Emtateni JV**':

*"The Reconstruction, Deepening and Lengthening of the Durban Container Terminal berths 203 to 205", Tender bid no. 2122830-0618, '**the Durban Tender**'.*

Forensics for Justice have been provided access to the Application and discovery documents in the matter between Durban Container Terminal Contractors Consortium versus Transnet SOC and CMI Emtateni JV, held at the South Gauteng High Court under case no. 33450/2018.

The discovery documents aforesaid consist of two bundles and will be referred to hereinafter as '**Bundle 1**' (paginated 1 to 2488) and '**Bundle 2**' (paginated 1 to 2170) in the order of which we received same from the Applicant, South Gauteng High Court under case no. 33450/2018.

In light of the fact that the bundles are some 4648 pages and therefore, to avoid prolixity we do not attach the two bundles hereto but will make the bundles available upon request.

EXECUTIVE SUMMARY

Arising out of investigations carried out by Forensics for Justice assisted by Paul O'Sullivan & Associates, in respect of the CMI Emtateni Joint Venture for the capital works project at Durban Container Terminal, we have reasonable grounds to suspect:

1. Fronting on the part of the Italian contractor, (CMC di Ravenna) with the beneficiaries being well known members of a long established Tenderpreneur network with very close Zuma family or Zuma associate links. The Oxford dictionary defines 'Tenderpreneur' as: "a person who uses their political connections to secure government contracts for personal advantage".
2. That the 'shareholders' in the joint venture are nothing more than commission-conduits for payments. We do not believe that a single one of them will lift a pick or shovel to carry out any work at all.
3. The *modus operandi* is a carbon-copy of the McKinsey / Regiments *modus*, where McKinsey did all the work, yet Regiments raked off hundreds of millions (of tax-payer funds) and used it to pay the Gupta and Zuma families and their associates. In this case, all the work will be carried out by CMC di Ravenna and its sub-contractors. However, since no payments have been made yet, it is not possible to determine where the cash will eventually end up. In order for that knowledge to be gleaned, the contract has to be allowed to continue. Obviously, that cannot be permitted.
4. None of the work would be carried out by any of the Tenderpreneur members of the JV. The work will be carried out by the one percent shareholder, namely CMC di Ravenna Africa (Pty) Limited, who will actually direct ALL the work, through its sole-shareholder CMC di Ravenna and it's duly appointed sub-contractors. Transnet have already been provided with the CV's of the management team, most of whom are Italian nationals, this is expanded upon in this report. The non-Italians are suspected to be window-dressing appointees.

5. The Durban Port project will result in a further flood of Italian nationals through dubiously issued work permits or 'employee transfers' in a repeat of the Gupta saga media companies. This was also the case with the Eskom Ingula Project, as will be seen in the report, with more than 390 Italian nationals managing the project. This will NOT develop home-grown skills.
6. The 49% shareholder of the 69% JV member (CMI Infrastructures (Pty) Limited) is a natural person, who is an Italian citizen, and is the Group CEO of CMC di Ravenna in Italy. It is not known how this person is able to be legally a part of the CMI Emtateni JV, whilst he is contemporaneously running a multi-billion Euro entity 9,000km away. We are of the opinion that he is merely fronting this effective 33.81% share of the JV, for his employer, CMC di Ravenna.
7. The 51% shareholder of the 69% JV member is Mr PG Mavundla with ID No. 670728 5365 080. He was the prior sole director of PG Mavundla Engineering (Pty) Limited, which collapsed due to financial mismanagement and tax fraud. As at the date of this report, Mr PG Mavundla and his company have a liability to SARS in excess of R52 million.
8. Possible tender fraud, (2017-08-21 letter signed by Mr Adriano Donadon) intended to conceal:
 - 8.1. that the originally intended bidder had been placed in Business Rescue (subsequently liquidation) following SARS judgments amounting to R52m. This resulted in the individuals concerned, hastily forming CMI Infrastructures (Pty) Limited, in the week after the collapse of PG Mavundla Engineering (Pty) Limited. This was also eight weeks before the tender closing date. A bank for the 69% shareholder was opened only five days before the tender closing date.
 - 8.2. The judgement against PG Mavundla Engineering (Pty) Limited on 16 August 2012, in terms of which PG Mavundla Engineering were found guilty of

submitting FIVE invalid tax-clearance certificates to CIDB during the periods 2008, 2009, 2010 and 2011 and was fined R30,000-00

9. We question how it was that CMI Infrastructures (Pty) Limited, were able to get such a high CIDB grading, a mere eight weeks after forming the company, and only a day after the application was submitted to the CIDB committee. We note that Jiyane (a Tenderpreneur beneficiary of one of the consortiums making up the JV) was at that time, the deputy chairman of CIDB. We will comment on the fact that the issue of a grading certificate at 8 and 9 to a company that has NEVER traded is in breach of the CIDB Regulations. We also note that when CMI Infrastructures obtained its tax clearance, its majority shareholder and his liquidated company was in debt to SARS in an amount of more than R52 million.

10. The suspicions concerning the Durban Tender are underpinned by the following too-good-to-be-true sequence of events, concerning CMI Infrastructures (Pty) Limited:

Date	Event
2017-02-28	CMC Mavundla Projects attend site briefings.
2017-06-13	PG Mavundla Engineering (Pty) Ltd went into Business Rescue with VAT judgements in the amounts of R29,246,659.99 and R51,971,811.04 .
(8 days)	
2017-06-21	CMI Infrastructures (Pty) Ltd was created.
(7 days)	
2017-06-28	Tax Clearance Certificate issued for CMI Infrastructures (Pty) Ltd.
(20 days)	
2017-08-18	the Bank Account for CMI Infrastructures (Pty) Ltd was opened.
(0 days)	
2017-08-18	CMI Infrastructures (Pty) Ltd registered on the Central Supplier Database OF National Treasury
(3 days)	

2017-08-21 CIDB grading application submitted to CIDB Committee.

(1 day)

2017-08-22 CIDB grading at 8 and 9 granted.

(0 days)

2017-08-22 **CMI Emtateni Joint Venture** submitted their tender.

(1 day)

2017-08-23 CIDB grading entered on Treasury database.

11. Finally, we will question how it is that so many of the persons involved in the CMI Emtateni Joint Venture, joined Mr PG Mavundla with cumulative tax judgements in excess of R100m, which does not appear to even have been picked up by either SARS (who seem to have issued Tax-clearances to many of them) or Transnet who under the previous management they did not have the capacity for in-depth due-diligence investigations.

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REGULATORY CONSIDERATIONS

The relevant legislation specifically pertaining to the investigation of this matter is set out below.

The Constitution, Act 108 of 1996

In terms of **Section 217**, *“when an organ of state in the national or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost effective.”*

Public Finance Management Act – Act ‘PFMA’

In terms of Section 51 (1) (b) (ii),

“An accounting authority for a public entity must take effective and appropriate steps to prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct and expenditure not complying with the operational policies of the public entity.”

In terms of Section 83:

- “(1) The accounting authority for a public entity commits an act of financial misconduct if that accounting authority wilfully or negligently:*
- (a) Fails to comply with a requirement of section 50, 51, 52, 53, 54 or 55: or*
 - (b) Makes or permits an irregular expenditure or a fruitless and wasteful expenditure.*
- (2) If the accounting officer is a board or other body consisting of members, every member is individually and severally liable for any financial misconduct of the accounting authority.*
- (3) An official of a public entity to whom a power or duty is assigned in terms of Section 56 commits an act of financial misconduct if that official wilfully or negligently fails to exercise that power or perform that duty. “*

In terms of Section 86:

- “(1) An accounting officer is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 38, 39 or 40.*
- (2) An accounting authority is guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years, if that accounting officer wilfully or in a grossly negligent way fails to comply with a provision of section 50, 51 or 55.”*

Prevention & Combatting of Corrupt Practices Act – Act 12 of 2004 ‘PRECCA’

In terms of Section 34:

- “(1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed -*
- (a) an offence in under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or*
- (b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.”*
- (2) Subject to the provisions of Section 37 (2), any person who fails to comply with subsection (1), is guilty of an offence.”*

In terms of Section 76 (3) of the Companies Act – Act 71 of 2008:

“Subject to subsections (4) and (5), a director of a company, when acting in that capacity, must exercise the powers and perform the functions of director-

- (a) in good faith and for a proper purpose;*
- (b) in the best interests of the company; and*
- (c) with the degree of care, skill and diligence that may reasonably be expected of a person-*
- (i) carrying out the same functions in relation to the company as those carried out by that director; and*
- (ii) having the general knowledge, skill and experience of that director.”*

Regulations in Terms of the Construction Industry Development Board Act, – Act 38 of 2000

In terms of Regulation 12, table 1: reading from the table, for any Grade 9 grading, a contractor must be able to demonstrate that in at least one of the preceding 2 years, the contractor had a turnover of at least R270,000,000 and available capital of R40,000,000.

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RELEVANT PERSONS & ENTITIES

Porcelli	Paulo Porcelli, the CEO of CMC di Ravenna in Italy and co-director of CMI Infrastructures (Pty) Ltd with Mavundla.
Mavundla	Philane Godfrey Mavundla, has a lucrative yet very controversial history of large tender awards which have been widely published in the media.
Sarjoo	Charles Sarjoo, owner of Sarkum Housing (Pty) Ltd (part of Masinya Consortium). Married to Constitutional Court Judge Leona Theron. Sarjoo has additional business interests with Mavundla, Nyandeni, Phambili Gama and Jiyane. His wife shares directorships with Jacob Zuma's legal team.
Jiyane	Christopher Jiyane, the Deputy Chairperson of CIDB from 1 August 2014 to 31 October 2017 and also a 35% owner of PC Bouers CC (part of Masinya Consortium), therefore a 'beneficiary' of the Joint Venture.
Nyandeni	Lungile Nyandeni, Director of Mantombana Enterprises CC (part of Omame Consortium). Shares business interests in a different company (Zimele Development Projects (Pty) Ltd) with Phambili Gama and Sarjoo in a SANRAL tender.
Mpisane	Mabong Mpisane, the subject of an investigation by the Public Protector Thuli Madonsela for allegations of abusing section 36 of the Supply Chain Management Regulations with Mavundla and Mpisane's sister Ngubo. This relates to alleged fraud by Schabir Shaik.
Ngubo	Nosipho Ngubo, see above in respect of Madonsela's investigation.
Phambili Gama	controversially linked to convicted fraudster Schabir Shaik, still sharing business interests. Phambili Gama is the COO of Zimele Development Projects (Pty) Ltd, beneficiaries of a large SANRAL Tender. Sarjoo and Nyandeni are also listed as directors of Zimele Development Projects (Pty) Ltd.
CMI Infrastructures	CMI Infrastructures (Pty) Ltd, (69% share in the CMI Emtateni JV)
Cmc di Ravenna	Cooperativa Muratori e Cementisti – Cmc di Ravenna, (1% share in CMI Emtateni JV)
Omame Consortium	Omame Empowerment Group Consortium (15% share in CMI Emtateni JV)
Masinya Consortium	Masinya Empowerment Group Consortium (15% share in CMI Emtateni JV)

TIMELINE OF EVENTS PERTAINING TO THE CMI EMTATENI JOINT VENTURE

2017-01-26 the Durban Tender was published by Transnet Capital Projects

2017-02-28 and **2017-03-01**, PG Mavundla attended the potential bidders meetings in as director of **CMC Mavundla Projects (Pty) Ltd** which is made up as follows:

75% CMC di Ravenna

25% PG Mavundla Engineering (Pty) Ltd (Business Rescue)

The CV's of Sandile Mavundla (page 1412 of Bundle 2), Patience Shabangu (page 1418), Musi Jiyane (page 1419) Mzwandile Mbili (page 1452), Nontobeka Mhlongo (page 1459), Nisha Rampaul (page 1507), Joakim CN Zitha (page 1511), Arthur Gertze (page 1522), are all submitted on the **PG Mavundla Projects (Pty) Ltd** letterhead.

and

2017-03-01 Certificate of Attendance at Tender Clarification Meeting (Day1) and (Day 2) the 'Tenderer' as "**CMC di RAVENNA**" and the persons that attended were Gaurav Arora and Giorgio Calderone. (pages 47 and 48 of Bundle 2 respectively)

2017-03-22 Tax Clearance Certificate issued for Amaqakala Construction and Projects CC (Forms part of the CMI Emtateni JV - Masinya Consortium)

2016-05-17 SARS Judgement in the amount of R523,651.74 (see **Annexure 'A'**)

2017-05-30 initial Closing date for the Durban Tender submissions.

2017-06-13 PG Mavundla Engineering (Pty) Ltd (Reg. no. 1997/020620/07) = BUSINESS RESCUE and has VAT judgement of R51 971 811.04. (see **Annexure 'B'**)

2017-06-21 CMI Infrastructures (Pty) Ltd (69% member of the CMI Emtateni JV) was formed.

It seems that PG Mavundla Engineering (Pty) Ltd intended to bid for the Durban Tender but hit a snag on 2017-06-13 when it had to go into Business Rescue. One week later CMI Infrastructures (Pty) Ltd was registered and became a 69% stakeholder in the CMI Emtateni JV.

Essentially, PG Mavundla Engineering (Pty) Ltd was unable to tender and created CMI Infrastructures (Pty) Ltd and tendered. By doing this, the respective parties concealed the fact that PG Mavundla Engineering (Pty) Ltd (in Business Rescue with VAT judgements in the amounts of **R29,246,659.99** and **R51,971,811.04**) and that they shared directorships with CMI Infrastructures (Pty) Ltd.

- 2017-06-28** Tax Clearance Certificate issued for CMI Infrastructures (Pty) Ltd.
- 2017-08-18** Bank Account opened for CMI Infrastructures (Pty) Ltd also on the 18th CMI Infrastructures (Pty) Ltd were loaded on to the Treasury – Central Supplier Database.
- 2017-08-18** CMI Infrastructures (Pty) Ltd was registered on the Treasury – Central Supplier Database.
- 2017-08-21** letter to CMI Infrastructures (Pty) Ltd from CIDB confirming application for grading designation(s) 9GB, 9CE, 9SJ, 8ME, 7EP will be **subject** to the final approval of the assessment committee.
- 2017-08-21** tender cover letter signed by Adriano Donadon which contains serious misrepresentations (see **Annexure 'C'**)
- 2017-08-22** Approval of CIDB grading designation(s) 9GB, 9CE, 9SJ, 8ME, 7EP for CMI Infrastructures.
- 2017-08-22** the Durban Tender was submitted to Transnet SOC by CMI Emtateni JV.
- 2017-08-23** the CIDB grading was loaded on to the Treasury database.
- NOTE:** On **2012-08-22** PG Mavundla Engineering (Pty) Ltd was found guilty of submitting FIVE invalid Tax Clearance Certificates to the CIDB. This information is on the CIDB website

(<http://www.cidb.org.za/publications/Documents/Gazette%20Notice%20for%20Concluded%20Hearings%20-%202012%20to%202016.pdf#search=Mavundla%20engineering>)

MISREPRESENTATIONS OF FACT

The proverbial 'smoking gun' is the letter signed by Adriano Donadon on **2017-08-21**, purporting to be signing on behalf of the '**CMI Emtateni Joint Venture**'. Having said this, there were many smoking guns found during our investigation, but the 2017-08-21 letter is the most notable. In that letter Donadon refers to CMI Infrastructure (Pty) Limited (without the 's') and falsely claimed that;

"CMI Infrastructure (Pty) Ltd a local 51% black owned company, which has delivered a few infrastructural projects in South Africa, such as:

- *The R16 billion Ingula Pumped Storage Scheme in Ladysmith;*
- *The John Ross Highway Project in Richards Bay;*
- *The Eastern Basin Acid Mine Drainage Project in Springs."*

Donadon then attempted to confuse the reader with a convoluted and nonsensical paragraph about the purported history of CMI Infrastructure (deliberately without the 's'), where he falsely states the following:

"CMI Infrastructure (Pty) Ltd ("CMI") started as an unincorporated Joint Venture between CMC di Ravenna ("CMC") and PG Mavundla Engineering (Pty) Ltd but in appreciation of and in order to give continued long-term effect to the spirit, purpose and import of the BB-BEE legislative goals, recently formalize the cooperation between the Parties by incorporating a company in South Africa. This has enabled the Parties to broaden their BB-BEE credentials by adding an additional Black Shareholding Entity, ie Ngwenyama Lion Trust."

The above strange paragraph is appears to be a further disingenuous attempt to cover up the real reason for incorporating CMI Infrastructures (Pty) limited, which was the collapse of PG Mavundla Engineering (Pty) limited, with tax-fraud debts in excess of R52m. It is NOTED that 'Ngwenyama Lion Trust' (mentioned in the letter) is not involved in the tender at all. There is no registered company called CMI Infrastructure (Pty) Ltd (without the 's').

Donadon was not yet finished with his misrepresentation, as he went on to state:

“CMI EMTATENI JOINT VENTURE is pleased to tender a firm black broad based empowerment initiative that has 58% black shareholding and 38% black female shareholding resulting in an impressive 95.38 BEE Score and archiving (sic) a level 2 Black Economic Status.”

The above representation is simply not true. In fact it is a deliberate misrepresentation which could amount to the offence of fraud.

Annexure ‘D’ is a copy of Annexure ‘FA2’ of the founding affidavit signed by Franz Willem Scholtz, in South Gauteng High Court Case No. 334502018 It is a seven page document being a print out from the Central Supplier Database of National Treasury, which is a public database. From that document, it can be clearly seen that:

Page 1: The entry was ‘created’ by Letsie Mankoba on 2017-08-18, four days before the tender submission date and the day after the bank account of the company was opened.

Page 2: The bank details were loaded by Treasury at 09:27 in the morning on 2017-08-22.

Page 3: The CIDB grading was verified by Treasury on 2017-08-23 at 10:34 in the morning, the day after tender submission.

Page 4: On the day the file was created on the Treasury database, (2017-08-18 the day after it had its first bank account opened) it’s B-BBEE status was registered as level 2. We are not sure how a company that had never traded was able to get a Level 2 B-BBEE.

And: The directors and owners were registered as Philani Godfrey Mavundla with 51% shareholding (Black) and Mr Paolo Porcelli with 49% shareholding (White).

Page 6: This page merely repeats the directors and ownerships, which is identical to page 4. However, this reinforces our findings that a foreign national is a 34.81% shareholder in the Joint Venture.

The above letter of Donadon dated 2017-08-17 was clearly an intentional (but clever) misrepresentation, as CMI Infrastructure (Pty) Ltd, had only been formed eight weeks earlier, on 2017-06-21, and had NEVER carried out any construction work at all, or indeed even traded at all, as alleged by Donadon.

We believe this fraud was necessary by Donadon, to conceal the truth, that the company that had actually performed the above infrastructure projects (**CMC Mavundla Projects (Pty) Limited**) had a 25% shareholder (**PG Mavundla Engineering (Pty) Limited**) who was in dire financial trouble with a R52m SARS judgement, indicative of tax-fraud and had been placed in business rescue and subsequent liquidation and therefore could NOT be a party to the tender.

The above misrepresentations were not confined to Donadon and Mavundla, there were other misrepresentations, which further muddied the waters, creating an opaque and impenetrable cloak of mystery. We intend to deal with these under the sub-heading:

False Publications

Annexure 'E': In a publication issued by Transnet on **2018-09-11**, the following false statement was made in respect of the Joint Venture:

“These include Italian construction company and its 51% black-owned South African company CMI Infrastructure, (sic) which is a 10 year old unincorporated Joint Venture with PG Mavundla Engineering (Pty) Limited.”

CMI Infrastructure (without the 's') was a previous Joint Venture name between CMC di Ravenna and PG Mavundla Engineering (Pty) Limited. Since PG Mavundla Engineering (Pty)

Limited had already been liquidated by the time of the media release and (although originally intended by the parties to be a part of the Durban Container Terminal tender) it did NOT submit a tender at all.

Annexure 'F': In a publication issued by CIDB in September 2018, which is not dated, but the meta-data of the PDF file dates the creation date as 2018-08-22, coincidentally the anniversary of the tender submission.

The publication gives the value of the award at R4,199,327,609.86. This is significantly higher than the figure Forensics for Justice have been given for the tender, c. R3,6 billion.

The publication gives the names of the two 15% Joint Venture shareholders as Mantombana Enterprises CC and Sarkum Housing (Pty) Ltd. This is false information, as the two 15% shareholders in the joint venture are 'Masinya Empowerment Group Consortium' and 'Omame Empowerment Group Consortium'. The provision of such false data can only serve to misinform the public at large, and confuse anyone attempting to understand the inner workings of the sleight of hand just witnessed.

There can be no doubt that some form of collusion took place between CMI Infrastructures (Pty) limited and Transnet employee/s, which resulted in the public being deliberately misinformed.

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TAX JUDGEMENTS: CMI JOINT VENTURE PARTIES AND RELATED ENTITIES

(see Annexure 'G')

CMI JOINT VENTURE JUDGEMENTS (TOTAL: R64,606,455.00)

Name: PHILANI GODFREY MAVUNDLA (an effective 35.2% of the Joint Venture)

2016-09-08 Judgement of R96 445.00

PINETOWN HIGH COURT Case number: 10864/2016

(NOTE, we could not find Mavundla's tax clearance certificate in the bundles)

Name: CHARLES SARJOO

2013-11-19 Judgement of R2 064 989.00

DURBAN HIGH COURT Case number: 12822/2013

Name: LUNGILE ETHELINE NYANDENI

2014-03-18 Judgement of R6 241 962.00

DURBAN HIGH COURT Case number: 3400/2014

The above persons should have been disqualified from the tender

Name: MABONG FLORA-JUNIOR MPISANE

DURBAN HIGH COURT Case number: 2427/2016

2016-03-10 Judgement of R55,679,407.03

2018-01-22 Withdrawal Certificate granted by SARS official Edith Coetzee

For five months of the adjudication process this candidate should have been disqualified.

Defendant Name: AMAQAKALA CONSTRUCTION AND PROJECTS CC

DURBAN HIGH COURT Case Number: 4632/2016

2016-05-17 Judgement of R523,651.74

2018-01-31 Withdrawal Certificate granted by SARS official Ms N. Mkuzangwe

For five months of the adjudication process this candidate should have been disqualified.

RELATED PARTY JUDGEMENTS: (TOTAL: R88,722,979.00)

Defendant Name: PG MAVUNDLA ENGINEERING (PTY) LTD

Claim Amount: R51 971 811.04

DURBAN HIGH COURT Case Number: 4847/2014

Defendant Name: SARBRO CONSTRUCTION (PTY) LTD (Director Charles Sarjoo)

2015-05-05 Judgement of R5,069,289.81

2017-10-26 Withdrawal Certificate granted by SARS official Michelle Els

Defendant Name: PBS GROUP PTY LTD (Director Charles Sarjoo)

2013-01-22 Judgement of R1 380 472.00

PIETERMARITZBURG HIGH COURT Case Number: 1035/2013

Defendant Name: SARKUM PROJECTS PTY LTD (Director Charles Sarjoo)

Claim Amount: R181 376.00

DURBAN HIGH COURT Case Number: 8951/2013

Defendant Name: IZINYONI TRADING 238 (PTY) LTD (Director Charles Sarjoo)

Claim Amount: R873 370.00

DURBAN HIGH COURT Case Number: 10467/2012

This means that it would have been impossible for the CMI Emtateni JV to have had proper Tax Clearance for all its members and member entities, at the material time of the tender, without collusion from SARS and blind acceptance from Transnet?

In terms of section 176(1) of the Tax Administration Act, No 28 of 2011 **'the Act'**:

"SARS may withdraw a certified statement filed under section 172 by sending a notice of withdrawal to the relevant clerk or registrar upon which the statement ceases to have effect."

In respect of those tax judgement withdrawn during the tender evaluation process the assumption is:-

- 1.1. The judgement debtor has entered into a scheme of arrangement with SARS or;
- 1.2. The judgement debtor has paid the amount in full. Due to SARS secrecy laws, the truth can only be discovered by Transnet properly interviewing the persons concerned and requiring them to provide documentation.

On a historical note we mention that on **22 August 2012**, PG Mavundla Engineering (Pty) Ltd, was found guilty of submitting FIVE invalid Tax Clearance Certificates to the CIDB. This information is available on the CIDB website:

<http://www.cidb.org.za/publications/Documents/Gazette%20Notice%20for%20Concluded%20Hearings%20-%202012%20to%202016.pdf#search=Mavundla%20Engineering>

Contractor Name	CRS Number	Company/ Corporation Registration Number	Nature of Complaint
P G Mavundla Engineering	104431	1997/020620/07	The Respondent submitted the following invalid Tax Clearance Certificates to the cidb: Tax Clearance Certificate Reference Number Validity Period 0020/1/2010/0002194201 30 July 2010 to 30 July 2011 0020/1/2009/0005861379 3 July 2009-3 July 2010 0020/1/2008/0001415401 22 July 2008-21 July 2009 0020/1/2008/0001415397 17 July 2008-16 July 2009 0020/1/2008/0001476455 30 January 2008-30 January 2009
Sanction imposed by CIDB			
Effective date: 22 August 2012			
The Board orders that:			
<ol style="list-style-type: none"> a. The Respondent is guilty as charged; b. A fine of R 25 000.00 be imposed on the Respondent; c. Such fine to be paid in full before any further application can be assessed by the cidb. 			

The above should have been a further Red-Flag to Transnet, as it shows a propensity to submit false documents.

CLEAR RED FLAGS PERTAINING TO ASSOCIATIONS OF CERTAIN DIRECTORS / MEMBERS OF CMI EMTATENI JOINT VENTURE

1 PHILANE GODFREY MAVUNDLA

Mavundla has a personal SARS Judgement against him in the amount of **R96,445.00**, and a company of which he is a sole director, PG Mavundla Engineering (Pty) Ltd has VAT judgements in the amounts of **R29,246,659.99** and **R51,971,811.04**. (See attached schedule)

Extracts from news article *“Hope springs (not) eternal in spat over toxic sludge”*, by Zwanga Mukhuthu on **20 June 2014**:

<https://mg.co.za/article/2014-06-19-hope-springs-not-eternal-in-spat-over-toxic-sludge>

The contract was awarded last month to the CMC/PG Mavundla Engineering Eastern Basin joint venture for a price of R956-million.

Last week Mavundla said the cost of his company’s work at Ingula remained at R7-billion, the amount tendered for.

Mavundla is said to be close to President Jacob Zuma; in 2009 he made headlines when he slaughtered 20 cattle to celebrate Zuma’s rise to the presidency. However, he said the allegations of his closeness to the president “have been made before, but there is certainly no proof”.

Meanwhile, Eskom interim chief executive Collin Matjila revealed in a presentation on June 5 that the Ingula schedule has been significantly delayed by an accident in October, in which six construction workers were crushed to death by scaffolding.



President Jacob Zuma and Philani Mavundla in 2011. Photo: Tebogo Letsie/Gallo Images/The Times

2 CHRISTOPHER SIPHIWE JIYANE

In respect of **PC Bouers CC**, now PC Builders Building and Civil Construction CC (part of Masinya Empowerment Group Consortium) it is noteworthy that on **12 July 2016**, Christopher Jiyane, while the Deputy Chairperson and a director of CIDB, was also registered with CIPC as a 35% owner thereof. No evidence of his declaration of interests with CIDB could be found.

On **31 July 2017** the Department of Public Works published that **CS Jiyane's** appointment date at CIDB being 1 August 2014 and his term of expiry date being **31 October 2017**. (<https://www.pa.org.za/speech/84248085>)

This means that at the time the Durban Tender bids were submitted, Jiyane was well placed to facilitate a 'miracle' at CIDB, i.e grade 8 and 9 for CMI Infrastructures (Pty) Limited, despite the company never having traded. Further investigation is required by CIDB.

3 CHARLES LAWRENCE BRAMWELL SARJOO

Mr Charles Sarjoo has extensive links through the principles of certain entities. Charles Sarjoo (part of Masinya Empowerment Group Consortium) has a SARS judgement against him in the amount of **R2,064,989.00** and VAT judgements totalling the amount of **R7,504,508.00**

Charles Sarjoo and **PG Mavundla** share directorships in the following entities:

CVC Construction Holdings (Pty) Ltd (in Final Liquidation)

CVC Construction Coastal (Pty) Ltd (in Final Liquidation)

There are no case numbers for the above which indicates voluntary liquidation. Liquidated companies and SARS debts are enormous **RED FLAGS**, from a financial stability perspective.

Charles Sarjoo and **Christopher Jiyane** share directorships in the following entities:

Black Contractors Federation (2002/012372/08)

4 LUNGILE NYANDENI (Mantombane Enterprises, part of the Omame Consortium)

Nyandeni has a SARS Judgement against her in the amount of **R6,241,962.00**.

Sarjoo and Lungile Nyandeni share directorships in the following entity:

Zimele Development Projects (Pty) Ltd

<http://zrs.co.za/default.asp>

Zimele Investment Enterprise Co. (Pty) Ltd was created as a result of an agreement between the South African National Roads Agency SOC Ltd (SANRAL) & N3 Toll Concession (RF) Proprietary Limited (N3TC), who entered into a 30 year Public Private Partnership agreement on a Build / Operate / Transfer basis to operate the N3 National highway.

N3TC created this 70% BEE Company in order to implement it's commercial and socio-economic development obligations.

The COO of Zimele Development Projects (Pty) Ltd is **PHAMBILI GAMA**, a business partner in several entities with Schabir Shaik, an extract of a news article published on 22 November 2004 "**Shaik unaware of 'irregular' book entries**", <https://www.iol.co.za/news/south-africa/shaik-unaware-of-irregular-book-entries-227673>

"Schabir Shaik had no knowledge of the "irregular" entries in the books of his company, Kobifin, the Durban High Court heard on Monday.

Shaik has been charged with fraud for the write-off of R1,2-million as Prodiba Development costs, the selling of the work share agreement of Kobifin to KobiIT which resulted in a profit of R3,5-million, and the creation of a non-distributable reserve as well as the revaluation of assets."

Forensics for Justice can confirm the directorship of Phambili Gama to KobiIT (thereby directly linking him to a convicted fraudster and the crime itself) and N3 Toll Concession (Pty) Ltd (linking him to Sarjoo and Nyandeni)

5 SISTERS: MABONG MPISANE (ZIKHULISE) AND NOSIPHO NGUBO (LUNGZA)

On **30 June 2016** a news article was published (See: <https://www.iol.co.za/news/south-africa/kwazulu-natal/mpisanes-sister-scores-r20m-contract-2040379>) in respect of Omame Empowerment Group

Consortium's member, **Lungza Management Consultants CC AND Zikhulise Group (Pty) Ltd** and **Mr PG Mavundla**:

"The city initially awarded the contract in November last year to ANC benefactor Philani Mavundla's company. But barely eight months later, Mavundla pleaded poverty, and has "ceded" the contract to little-known Lungza Management Consultants. Lungza is owned by Mpisane's sister, Nosipho Fortunate Ngubo, who is understood to have been a bridesmaid at the Mpisanes' wedding.

The developments come amid an investigation by Public Protector Thuli Madonsela into the abuse of the Section 36 regulation. The investigation, requested by the DA in eThekweni, came after the Zikhulise won numerous multimillion rand contracts through Section 36."

This is the same Mr PG Mavundla that owes more than R52million to SARS and simultaneously wants Transnet to award him an effective 35.19% of a R4.2billion contract. The risk profile is just too high to be considered.

Forensics for Justice believe the involvement in the consortium of person/s who were arrested and charged with FRAUD, for submitting false documents to obtain government tenders must surely have been seen as a massive RED-FLAG that should have caused Transnet to disqualify the consortium. See attached press article **Annexure 'H'**. The failure of Transnet to disqualify is a RED FLAG to internal corruption.

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SUGGESTED URGENT ACTION BY TRANSNET

In the light of the contents hereof, Forensics for Justice suggests the following steps be taken by Transnet, which we hope to be taken as a matter of urgency:

1. Self-report suspected tender fraud, and/or corruption and/or fronting to Treasury, in terms of PFMA and Treasury regulations.
2. Substitute the notice of intention to defend the action under South Gauteng High Court matter 33450/2018 with a notice to abide by the decision of the court thereby removing possible director liability for fruitless and wasteful expenditure on costs orders.
3. Suspend the CMI Emtateni JV contract, pending the outcome of an (urgent) independent forensic investigation, thereby resulting in a freeze of any and all payments to the JV entity, in particular the R87m due to be paid at the end of November 2018.
4. Report to Directorate for Priority Crimes Investigation (Hawks) in terms of Section 34 of Act 12 of 2004.
5. Carry out their own internal investigations in respect of the above, not only to verify what we have uncovered, but also to determine:
 - 5.1 Whether the statutory Treasury Notification before the award of the Tender took place, was actually carried out.
 - 5.2 How Transnet allowed a bidder with no financial records whatsoever to present a bid, which is clearly the case with CMI Infrastructures (Pty) Limited, who only had a bank account five days before the closing of the tender.

5.3 What risk aversion process was followed in respect of the financial stability of CMC di Ravenna, given that they have a severe liquidity crisis which resulted in them seeking a EUR325,000,000 bond, to roll over debt to 2022, and has already resulted in them defaulting on the bond payment as late as this week, which are seen as massive RED FLAGS prior to liquidation of a company.

See: <https://www.globalcapital.com/article/b1bsplggxsvvf5/cmc-ravenna-bonds-drop-on-missed-coupon>

CMC Ravenna bonds drop on missed coupon

Italian construction firm Cooperativa Muratori e Cementisti di Ravenna officially announced it would miss the November 15 coupon payment of its 2023 bonds.

By Victor Jimenez 12 Nov 2018

Those bonds were trading at 30 cents last Friday, said a high yield fund manager, and lower this week, after trading in the high 70bp area as recently as September.

CMC Ravenna said it would have to miss the November 15 payment and was "considering the necessity to undergo an in-depth examination of the reasons lying behind the current weighting down of the company's cash flow status and to identify the most appropriate measures to deal with it."

The board blamed "a market context that was already structurally problematic, for reasons that arose spontaneously without any predictability, linked to non-receipts of orders."

On October 15, the borrower had pointed out that there were six delayed payments from contract counterparties affecting its cash flows.

"Investors are very much aware that the turn of the cycle is near, and they've become more nervous with these situations," said a rating agency analyst, commenting on defaults in the wider leveraged finance markets. "But despite the increase in negative rating actions in our portfolio, liquidity indicators are strong and the default rate should stay around just 2% in 2019. In general, there are no concerns over maturities during the next two years, either."

In a note to clients on Monday, TwentyFour's portfolio manager Felipe Villarroel said: "At around 2%, European high yield default rates have been among the lowest in the world for a number of years now and it is difficult to see them going lower from here. Whilst we do not expect default rates to pick up substantially, we cannot ignore the fact that the number will most likely increase as this cycle continues to mature."

In mid-September, CMC Ravenna held a call with investors for the first time over its reporting of a delay in the collection of receivables and advance payments. Free cash flow fell from minus €89m in the fiscal year 2017 to minus €220m for the 12 months ending in June 2018.

After the call and a Moody's ratings downgrade from B2 to B3 on September 18, its 2023s began trading down from high 70s.

- 5.4 What the legal status is of Mr Paulo Porcelli in South Africa and why Transnet did not seem to query this, given that he is an effective 33.81% of the JV. In this regard, it is noted that Mr Porcelli cannot be in two places at once. He is the current Group CEO of CMC di Ravenna, which must already be an exhaustive brief. What steps have been taken to inspect Mr Porcelli's work permit and tax clearance?
- 5.5 Whether the above mentioned cash crisis was declared in the Transnet tender documents, given that the intention to raise a EUR325,000,000 bond MUST have been known about at the time of tender and whether the failure to disclose amounts to a fraudulent non-disclosure of a material fact that could negatively influence a decision to award the tender.
- 5.6 How it is that all the JV members gave resolutions and powers of attorney to the 1% member, to prepare the tender documents and sign all the documents. In itself an act of subjugation by the 1% member.
- 5.7 How it was that the Transnet procurement process overlooked the obvious irregularities, which in itself is a massive Red-Flag for corruption and which staff members are to be held accountable for same.
- 5.8 Whether, or not as the case may be, either Mr Mavundla, or Mr Porcelli, who together make up 69% of the joint venture provided tax clearance certificates, as we could not find any evidence that they did.
- 5.9 In particular, whether any staff member benefitted personally from the rigged tender process, or whether any staff member spoke out, or attempted to speak out and, if so what steps were taken.
- 5.10 How it was that Transnet and CIDB came to issue patently false media releases in respect of the Durban Container Terminal award, with a focus on the false descriptions of the entities concerned.

LATE INFORMATION RECEIVED

Finally, and this does not appear in the body of our report, due to the fact that the information has only now been received, and we have not had time to investigate it:

It has been anonymously reported to us that CMC di Ravenna, are currently negotiating to take over the proposed sub-contractors of Murray & Roberts, who were an unsuccessful bidder. It is a classic corruption red-flag, when a winning tenderer wants to employ losing bidders or their sub-contractors to do the work. It is even more of a red-flag when it materialises that the sub-contractors being approached are NOT the subcontractors that were declared to be a part of the bid submission. Our source says that CMI Infrastructures have taken steps to 'ensure' that Transnet will approve the proposed changes, if they have not already done so. This implies a level of collusion within Transnet. We are informed that the work category includes dredging and piling.

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Applicant in South Gauteng High Court

Case No. 33450/2018

t.b.a.

ANNEXES

REF	DESCRIPTION
A	Mabong Mpisane SARS Judgement of R523,651.74
B	PG Mavundla Engineering (Pty) Ltd SARS judgement of R51 971 811.04
C	The tender cover letter signed by Adriano Donadon dated 2017-08-21
D	A copy of Annexure 'FA2'
E	Publication issued by Transnet on 2018-09-11
F	Publication issued by CIDB in September 2018
G	Tax Judgements: CMI Joint Venture Parties And Related Entities
H	Press article: <i>"Sars gets go-ahead to hold Mpisane assets for two more months"</i>